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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 FAREED-SEPEHRY-FARD[®],

8 Appellant,

9 v.

10 U.S. TRUSTEE, et. al.,

11 Appellees.
12

Case No. 17-cv-06577-BLF

**ORDER AFFIRMING BANKRUPTCY
COURT'S ORDER DISCHARGING
CHAPTER 13 TRUSTEE AND FINAL
DECREE**

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14 This action arises from Debtor/Appellant Fareed-Sepehry-Fard[®]'s appeal of the United
15 States Bankruptcy Court's Order Discharging Chapter 13 Trustee after Case Dismissal and Final
16 Decree ("Discharge Order"). Notice of Appeal, ECF 1-4; Am. Notice of Appeal, ECF 18. The
17 Bankruptcy Court discharged the Chapter 13 Trustee of the estate of Debtor/Appellant Fareed-
18 Sepehry-Fard[®] and closed the case by entering the Discharge Order on October 16, 2017. *See*
19 Discharge Order, ECF 1-4.

20 Fareed-Sepehry-Fard[®] appealed that order to this Court naming the following Appellants:
21 U.S. Bank National Association, as Trustee for Greenpoint Mortgage Trust Mortgage Pass-
22 Through Certificates, Series 2007-AR2, Nationstar Mortgage LLC, Greenpoint Mortgage
23 Funding, Inc., Capital One, N.A., Clear Recon Corp, Countrywide Home Loans, Inc., and Devin
24 Derham-Burk, Trustee. Notice of Appeal; *see also* Am. Notice of Appeal. Only Devin Derham-
25 Burk, the Chapter 13 Trustee, is the party subject to the Discharge Order in the underlying
26 bankruptcy case, *In re Fareed-Sepehry-Fard*, Bankr. N.D. Cal. Case No. 17-bk-50499.

27 Appellant Fareed-Sepehry-Fard[®] filed an opening brief on April 2, 2018. Opening Br.,
28 ECF 20. Appellee Chapter 13 Trustee filed a responsive brief on May 3, 2018. Responsive Br.,

ECF 22. Fareed-Sepehry-Fard[©] submitted his reply brief on May 14, 2018. Reply Br., ECF 23. Although the Chapter 13 Trustee further submitted a sur-reply, that brief was stricken because the Trustee did not obtain leave of the Court. ECF 27.

The Court has considered the parties' briefing and finds the matter to be appropriate for disposition without oral argument. *See* Civ. L.R. 7-1(b). For the reasons discussed below, the Bankruptcy Court's Discharge Order is AFFIRMED.

I. PROCEDURAL BACKGROUND

On March 1, 2017, Fareed-Sepehry-Fard[©] filed a Chapter 13 petition initiating the underlying bankruptcy action (Case No. 17-bk-50499). Bankr. Docket, ECF 14-2. On March 15, 2017, First American Title Insurance Company filed a motion for an order confirming that an automatic stay was not in effect and did not bar its motion to dismiss pending in a state court action initiated by Fareed-Sepehry-Fard[©]. Record on Appeal 6, ECF 14-3.¹ On April 4, 2017, the Bankruptcy Court issued an order confirming that no stay was in effect. Record on Appeal 136, ECF 14-6. One week later, on April 11, 2017, Fareed-Sepehry-Fard[©] filed a memorandum regarding his "unavailability for six weeks due to Debtor's medical conditions and inability of Debtor to file for motion extending the time to stay or to reimpose the stay." Record on Appeal 140, ECF 14-19.

On June 26, 2017, the Chapter 13 Trustee moved to dismiss the bankruptcy action based on Fareed-Sepehry-Fard[©]'s failure to prosecute. Record on Appeal 190 (citing Dkt. 100 of Case No. 17-bk-50499), ECF 14-20. After no objections were filed, the Chapter 13 Trustee requested an entry of order of default. *Id.* On July 19, 2017, the Bankruptcy Court dismissed the case without prejudice and ordered the Chapter 13 Trustee to submit her Final Report for approval at a later date. Record on Appeal 196, ECF 14-20. On October 16, 2017, the Bankruptcy Court entered an order discharging the Chapter 13 Trustee and closing the case, and entered a final decree. Discharge Order.

¹ The cited page number for the Record on Appeal refers to the Bates number at the bottom of each document.

II. APPEAL OF THE DISCHARGE ORDER

On October 27, 2017, Fareed-Sepehry-Fard[®] appealed the Discharge Order. He filed an amended notice of appeal on November 2, 2017. *See* Am. Notice of Appeal. The amended notice of appeal states that the subject of the appeal is the Bankruptcy Court’s Order Discharging Chapter 13 Trustee After Case Dismissal and Final Decree (i.e., the Discharge Order) and “all Interlocutory orders.” *See id.*

To the extent that Fareed-Sepehry-Fard[®] intends to appeal other orders than the Discharge Order, his appeal is untimely. The time to appeal an order is within 14 days after it issued. Fed. R. Bankr. P. 8002. Fareed-Sepehry-Fard[®] filed the amended notice of appeal on November 2, 2017, which is more than 14 days after any “interlocutory order” was issued by the Bankruptcy Court. The result is the same even if the 14 day limit was calculated from the date of the original notice of appeal, which was filed on October 16, 2017. Thus, only the appeal of the Discharge Order is timely and the sole matter present in this action.

This Court has jurisdiction to hear appeals “from final judgments, orders, and decrees” of bankruptcy courts. 28 U.S.C. § 158(a)(1). The Discharge Order is subject to appellate review. *Cf. In re Schafler*, No. BAP NC-06-1051, 2007 WL 7540989, at *2–3 (B.A.P. 9th Cir. Jan. 18, 2007) (reviewing the debtor’s appeal of an order discharging the trustee).

III. ISSUES PRESENTED

Fareed-Sepehry-Fard[®] identifies five issues for appeal in his opening brief:

- (1) whether the U.S. Trustee and the Bankruptcy Court judge failed to uphold Fareed-Sepehry-Fard[®]’s Eighth Amendment right against cruel and unusual punishment and whether the Bankruptcy Court judge’s order usurped the “constitutional form of government;”
- (2) whether the U.S. Trustee failed to prevent harm to Fareed-Sepehry-Fard[®] under 18 U.S.C. § 1346 while causing him economic and physical damages;
- (3) whether the Bankruptcy Court judge had jurisdiction “to do anything” after Fareed-Sepehry-Fard[®] filed a notice of unavailability due to medical conditions and whether the judge violated the Eighth Amendment;

(4) whether the Bankruptcy Court judge usurped this Court’s order regarding Fareed-Sepehry-Fard[®]’s notice of unavailability based on his medical conditions; and
(5) whether the Bankruptcy Court judge had Article III standing.

Opening Br. 1–2. The presented issues do not directly challenge the merits of the Discharge Order. Rather, Fareed-Sepehry-Fard[®] appears to argue that the Bankruptcy Court’s Order violated his constitutional rights.

The Court also notes that the first and second issues were not presented in Fareed-Sepehry-Fard[®]’s statement of issues filed with the Bankruptcy Court. *See* Case No. 17-bk-50499, Dkt. 129. Appellee Chapter 13 Trustee does not object to the two issues in her brief. Moreover, Fareed-Sepehry-Fard[®] does not separate out the five issues in his brief and generally relies on the same arguments to support his position. As such, the Court will consider his arguments and determine whether he can prevail on the issues identified in his opening brief.

IV. THE PARTIES’ ARGUMENTS

Fareed-Sepehry-Fard[®] first argues that the U.S. Trustee and the Bankruptcy Court judge failed to uphold his Eighth Amendment right and that the judge’s order violated the “constitutional form” of government. Opening Br. 2 (citing 18 U.S.C. § 1918,² U.S. Const. amend. VIII,³ and Cal. Const. art. I, §§ 7, 17⁴). For support, Fareed-Sepehry-Fard[®] contends that this Court issued three orders granting his request for an extension of time to file an opening brief in another appeal due to his medical conditions.⁵ *Id.* (citing Ex. A, ECF 17-1). He also points to three letters written by his physicians. *Id.* (citing Ex. B, ECF 17-2).

In light of the three orders issued by this Court, Fareed-Sepehry-Fard[®] asserts that the U.S. Trustee and Bankruptcy Court judge violated his constitutional rights. *See* Opening Br. 1–2. On this basis, Fareed-Sepehry-Fard[®] argues that the Discharge Order is void. *See id.* at 2 (contending

² Section 1918 provides that an individual who holds a position in the federal government shall be fined if he or she participates in a strike against the government.

³ The Eighth Amendment prohibits the government from imposing cruel and unusual punishment.

⁴ Sections 7 and 17 of California Constitution Article 1 provides the right to due process and protection against cruel and unusual punishment.

⁵ The three orders were issued in *Fareed-Sepehry-Fard v. Countrywide Home Loans, Inc., et al.*, Case No. 17-cv-02126-BLF.

that “the judgment is void”). He also claims that the U.S. Trustee failed to protect him against cruel and unusual punishment and failed to prevent harm pursuant to 18 U.S.C. § 1346.⁶ *Id.* at 2–3.

Fareed-Sepehry-Fard[®] further elaborates his arguments. In his view, the Bankruptcy Court’s Order contravenes the three orders issued by this Court in Case No. 17-cv-02126. Fareed-Sepehry-Fard[®] also contends that the Bankruptcy Court was on notice that he had medical conditions and was an “unavailable litigant.” Opening Br. 6–7. On this basis, Fareed-Sepehry-Fard[®] appears to argue that the Bankruptcy Court should not have conducted proceedings or issued the Discharge Order due to his medical conditions. The core of his argument is based on this Court’s three orders granting him extensions of time to file an opening brief in Case No. 17-cv-02126. *See id.* at 6–9. Fareed-Sepehry-Fard[®] also points out that this Court granted him an extension of time to file an opening brief in this case. *Id.* at 6 n.1.

In addition, Fareed-Sepehry-Fard[®] argues that California Rules of Court 8.63 provides that a “court must extend time” for good cause and that his physicians’ letters of unavailability support a showing of good cause. Opening Br. 9–10. He further asserts that he is entitled to equal protection as well as protection from cruel and unusual punishment under the U.S. Constitution and California Constitution. *Id.* at 10–12. Fareed-Sepehry-Fard[®] claims that the Bankruptcy Court and the U.S. Trustee violated his constitutional rights by being deliberately indifferent to his “serious” medical needs. *See id.* at 12–14. Based on the alleged constitutional violations, Fareed-Sepehry-Fard[®] appears to argue that the Bankruptcy Court judge violated 18 U.S.C. § 1918, which states that an individual may be fined or imprisoned if he or she holds a position in the federal government while being a member of an organization that asserts the right to strike against the federal government. *Id.* at 10–11 (citing 18 U.S.C. § 1918(4)).

As a final point, Fareed-Sepehry-Fard[®] avers that the Bankruptcy Court judge appeared to be biased on the grounds that the judge “denied [his] due process [rights]” by continuing proceedings despite the fact that Fareed-Sepehry-Fard[®] submitted a notice regarding his medical

⁶ Section 1346 defines the term “scheme or artifice to defraud” to include “a scheme or artifice to deprive another of the intangible right of honest services.”

conditions. Opening Br. 14–16. For support, Fareed-Sepehry-Fard[®] points to an adversary proceeding which he filed in the Bankruptcy Court, Case No. 17-ap-05040. *Id.* at 17. In that adversary proceeding, Fareed-Sepehry-Fard[®] argues, the Bankruptcy Court judge issued an order continuing a status conference from June 22, 2017 to August 1, 2017 so that it could be heard on a motion to dismiss filed by certain defendants. *Id.* Fareed-Sepehry-Fard[®] contends that the judge contravened his own order by holding a hearing on a motion to dismiss for lack of jurisdiction on June 20, 2017 and that this is evidence showing that the judge colluded with Appellees. *Id.* at 17–18.

The Chapter 13 Trustee responds that the October 16, 2017 Discharge Order “was a pro forma order, entered in Appellant’s bankruptcy case pursuant to the standard procedures of the bankruptcy court following the dismissal of a chapter 13 case.” Responsive Br. 2. According to the Chapter 13 Trustee, the Discharge Order simply provides notice that the “Trustee [was] discharged from her appointment as chapter 13 trustee of the debtor’s bankruptcy estate, the Trustee’s bond [was] canceled, and the case [was] closed,” and an order closing the case is a ministerial act. *Id.* at 2–3. The Chapter 13 Trustee also contends that vacating the Discharge Order would not result in the reversal of the dismissal of the underlying bankruptcy case and thus reappointment of the Trustee would be a purposeless act. *Id.* at 2, 4.

The Chapter 13 Trustee further challenges Fareed-Sepehry-Fard[®]’s argument that his right to due process was violated by the dismissal of the underlying bankruptcy case without “making sufficient allowances for [his] medical conditions.” Responsive Br. 4. The Chapter 13 Trustee asserts that Fareed-Sepehry-Fard[®]’s argument is unavailing because he did not timely file an appeal of the order dismissing the case and that the dismissal order became a final, non-appealable order. *Id.*

V. DISCUSSION

After considering the parties’ arguments and reviewing the record on appeal, the Court concludes that Fareed-Sepehry-Fard[®] has failed to submit sufficient evidence or arguments to prevail on any issue identified in his opening brief.

First, as a preliminary issue, to the extent that Fareed-Sepehry-Fard[®] challenges any prior

orders other than the Discharge Order in this appeal, his appeal is untimely. As mentioned, the time to appeal an order is within 14 days after it issued. Fed. R. Bankr. P. 8002. Because Fareed-Sepehry-Fard[®] did not appeal other orders within 14 days after they were issued, his challenge to those orders is untimely and the Court cannot hear that challenge. The Court agrees with the Chapter 13 Trustee's argument on this point (*see* Responsive Br. 4).

Second, Fareed-Sepehry-Fard[®] has not established that the Bankruptcy Court's failure to institute a "stay" of the case during the pendency of his medical unavailability violated his constitutional rights. Fareed-Sepehry-Fard[®] advised the Bankruptcy Court of a needed pause in the proceedings for six weeks commencing April 11, 2017. No further request was filed in that case. Filing requests for extensions of time in unrelated cases in federal district court does not inform the Bankruptcy Court or the other parties in this case of a continuing medical problem. Thus, the primary issue on which this appeal is based was not raised in the Bankruptcy Court. The Bankruptcy Court did not deny any request for an extension of time based on medical need. And the Bankruptcy Court judge could not possibly have known of the contents of files in a different court. On this record, there is no support for the claimed constitutional violation. Nor has he shown how the U.S. Trustee violated 18 U.S.C. § 1346, which only defines the term "scheme or artifice to defraud."

Moreover, the Court rejects Fareed-Sepehry-Fard[®]'s contention that the Bankruptcy Court judge violated 18 U.S.C. § 1918. Section 1918 "establishes criminal penalties," *Am. Postal Workers Union AFL-CIO v. U.S. Postal Serv.*, 682 F.2d 1280, 1283 n.1 (9th Cir. 1982), and thus has no relation to this appeal which concerns a bankruptcy proceeding. Insofar as Fareed-Sepehry-Fard[®] argues that § 1918 is applicable based on the purported constitutional violations, the Court is unpersuaded by this argument because he has not shown such violations.

Fareed-Sepehry-Fard[®] also relies on California Rules of Court 8.63 and appears to contend that the Bankruptcy Court should have continued its proceedings due to his medical conditions. California Rules of Court 8.93 is a state rule that concerns procedures for extending time in appellate proceedings. *See* Cal. R. Ct. 8.63. Because the procedure of the underlying bankruptcy case was governed by Federal Rules of Bankruptcy Procedure (*see* Fed. R. Bankr. P. 1001) and

not state rules, California Rules of Court 8.63 was inapplicable. Therefore, the Court rejects Fareed-Sepehry-Fard’s reliance on Rule 8.63.

Third, Fareed-Sepehry-Fard’s assertion that the Bankruptcy Court judge appeared to be biased is unpersuasive. Fareed-Sepehry-Fard argues that in another adversary proceeding (Case No. 17-ap-05040), the Bankruptcy Court judge contravened his own orders and colluded with Appellees. However, Fareed-Sepehry-Fard has not shown that the judge issued any inconsistent orders. In that adversary proceeding, two distinct motions to dismiss were filed by different defendants. *See* Dkt. Nos. 33 and 35 in Docket Sheet, ECF 14-46. The Bankruptcy Court judge issued an order granting a motion to dismiss for lack of jurisdiction filed by two defendants after holding a hearing on June 20, 2017. Record on Appeal (“Order Granting Motion to Dismiss”), ECF 14-46. Prior to issuing that order, the Bankruptcy Court judge continued a status conference from June 22, 2017 to August 1, 2017 so that the conference could be heard with the other motion to dismiss. Record on Appeal (“Order Continuing Status Conference”), ECF 14-46. That prior continuance order did not continue the June 20, 2017 hearing. As such, there were no inconsistencies in the Bankruptcy Court judge’s orders and the June 20, 2017 hearing was proper.

The Court also notes that Fareed-Sepehry-Fard fails to provide any argument with respect to his fifth issue—whether the Bankruptcy Court judge lacked Article III standing (Opening Br. 1–2). In any case, he cannot succeed on that issue. Standing generally pertains to whether a plaintiff has standing to pursue a suit as opposed to whether a bankruptcy court judge has standing to preside over a proceeding. Indeed, *Lujan*, the case cited by Fareed-Sepehry-Fard holds that the *plaintiff* must satisfy standing requirements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

The above conclusion is not changed by the arguments in the reply brief. Fareed-Sepehry-Fard asserts that the Bankruptcy Court never had subject matter jurisdiction and personal jurisdiction due to his notice of availability and medical conditions. Reply Br. 5, 7–10. He further emphasizes his arguments based on constitutional violations. *Id.* at 5–13. The Court does not find those arguments persuasive.

Although Fareed-Sepehry-Fard contends that his notice of unavailability and medical conditions deprived the Bankruptcy Court of subject matter jurisdiction, there is no case law that

1 supports his contention. To the contrary, the Bankruptcy Court of this District had subject matter
2 jurisdiction because the underlying bankruptcy case arose under Title 11 of the United States
3 Code. *See* 28 U.S.C. §157(a) (bankruptcy judges may hear any or all cases under Title 11 that has
4 been referred by the district court).

5 Regarding personal jurisdiction, Fareed-Sepehry-Fard[®] does not provide a detailed
6 argument. In any case, it is well established that “the debtor submits to personal jurisdiction of the
7 court sitting in the district in which he filed” a petition in a bankruptcy case. *In re Vodenos*, 553
8 B.R. 786, 791 (Bankr. C.D. Cal. 2016) (citation omitted). Here, Fareed-Sepehry-Fard[®] filed his
9 Chapter 13 petition with the Bankruptcy Court. Therefore, he “submit[ted] to personal
10 jurisdiction” of the Bankruptcy Court. *Id.* The Court finds no authority showing that personal
11 jurisdiction becomes void when the debtor files a notice of “unavailability.”


12 In addition, as discussed earlier, Fareed-Sepehry-Fard[®] has not shown any constitutional
13 violations.

14 **VI. ORDER**

15 For the foregoing reasons, the Bankruptcy Court’s Order Discharging Chapter 13 Trustee
16 after Case Dismissal and Final Decree is AFFIRMED. The Clerk shall close the file.

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18 **IT IS SO ORDERED.**

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20 Dated: August 27, 2018

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22 BETH LABSON FREEMAN
23 United States District Judge
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